

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Helmut PEISE et al.

Serial No.: 10/815,192

Filed: March 31, 2004

For: Apparatus for Gasification of Combustion and
Waste Materials Containing Carbon and Ash

Examiner: Kennedy, J.

Group Art: 1764

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

S I R:

This is a Request for a Panel Review of Issues on Appeal in accordance with the Office Gazette Notice dated July 12, 2005. The present request is filed concurrently with a Notice of Appeal and is filed before an Appeal Brief. No amendments are being filed with this request.

Arguments supporting the Request for Review begin on page 2 of the present communication.

ARGUMENTS

This Notice of Appeal and Request are filed in response to the final Office Action dated October 7, 2008.

The matters to be reviewed are (1) whether claims 1-7 are broadened outside the two year statutory period under 35 U.S.C. §251, and (2) whether independent claim 1 is unpatentable under 35 U.S.C. §103 over U.S. Patent No. 5,464,592 (Booker) in view of U.S. Patent No. 4,188,915 (Kummel).

Rejection under 35 U.S.C. 251

The present reissue application was filed to correct a translation error in U.S. Patent No. 5,968,212. More specifically, the German term “Flugstromvergaser” was incorrectly translated as “fluidized-bed reactor” and should have been translated as --entrained-flow gasification reactor--. Translation errors are clearly an error of fact that is correctable by reissue as held in *In re Oda*¹.

The Examiner contends that replacing “fluidized-bed reactor” with --entrained-flow gasification reactor-- broadens the claims. The Court of Appeals for the Federal Circuit (CAFC) in *Forest v. Ivex*² states that comparison of the scope of the reissue claims with the claims of the original patent is a matter of claim constructions, and it is performed from the perspective of one having ordinary skill in the art. In *Philips v. AWH Corp.*³ the CAFC states “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification”. In *Forest v. Ivex*, the CAFC found that a claim corrected to recite a method of converting (-)-diol intermediate, rather than (+)- diol intermediate, was not improperly broadened because the

¹ 443 F.2d 1200, 170 USPQ 268 (CCPA 1971)

² 501 F.3d 1263, 84 USPQ2d 1099, 1105 (Fed. Cir. 2007)

³ 415 F.3d 1303, 75 USPQ2d 1321, 1326 (Fed. Cir. 2005), cert-denied, 126 S. Ct. 1332 (2006)

specification made it clear that (-)-diol was used and because a person of ordinary skill in the art reviewing the patent would find the error in the claim to be immediately apparent.

In rejecting the claims under 35 U.S.C. 251 in the present application, the Examiner relies on the declaration of Dr. Manfred Schingnitz (filed on April 15, 2008), which explains differences between entrained-flow and fluidized bed gasification. However, Dr. Schingnitz's declaration further explains that because of these differences between the two gasifier types, one skilled in the art would appreciate that the gasifier referred to by U.S. Patent No. 5,968,212 can not be considered to be a fluidized-bed reactor and can only be considered to be an entrained-flow gasification reactor. Thus, a person skilled in the art reviewing the patent would find the error in the term "fluidized-bed reactor" in the claims to be immediately apparent. As previously established, the original specification clearly discloses an entrained flow gasification reactor.

The correction made by the present application is analogous to the correction made in *Forest v. Ives* in that the specification of the present specification discloses the correct term and in that the error would be immediately apparent to one skilled in the art reviewing the patent. Thus, it follows that the replacement of the incorrect term "fluidized-bed reactor" with --entrained flow gasification-- does not constitute a broadening of the original claim, but merely a correction of the claim to be consistent with the original specification. Accordingly, the rejection under 35 U.S.C. §251 should be withdrawn.

Rejections under 35 U.S.C. §103

Claims 1-7 stand rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 5,464,592 (Booker) in view of U.S. Patent No. 4,188,915 (Kummel).

Independent claim 1 relates to an entrained-flow gasification reactor and recites "a refractory-grade lining configured to form a first, upper part of said reaction chamber", "a

cooling wall configured to form a second, lower part of said reaction chamber, said second part of said reaction chamber including a lower floor and a lower outlet opening, said cooling wall including cooling coils connected in a gas-tight manner”, and “said refractory-grade lining extending downward in a direction parallel to sidewalls of said reactor chamber over said cooling wall in an area of said second part of said reaction chamber including an area of said lower floor, such that said refractory-grade lining and said cooling wall are joined in an overlapping fashion to compensate for different heat expansions”.

Brooker fails to disclose, teach or suggest the latter limitation because Brooker fails to disclose a refractory grade lining that extends over the throat section 31 (which the Examiner considers to be the cooling wall) “in a direction parallel to the sidewalls of said reactor chamber” ... “such that said refractory-grade lining and said cooling wall are joined in an overlapping fashion to compensate for different heat expansions”. Brooker is directed to a gasifier throat structure that includes a cooling system. According to Brooker, a gasifier 10 has an elongated shell 11 with a refractory liner 12 which forms a combustion chamber 13 (see col. 2, lines 11-15; and Fig. 1 of Brooker). A burner 14 is disposed at an upper end of the gasifier (col. 2, line 17-10). The lower end of the gasifier shell 11 includes a floor 19, which is a continuation of the skill and has a conical shape with a constricted throat opening 21 (col. 2, lines 25-32). The throat section 31 of the gasifier is a continuation of the gasifier floor 19 and refractory lining 22 (col. 2, lines 53-55). The throat section 31 also includes a framework of conductors or pipes 32 which are connected to a manifold 36 (col. 2, lines 62-67).

The Examiner considers the refractory grade lining 12 of Brooker to be the claimed refractory lining and the throat section 31 of Brooker to be the claimed cooling wall. However, the refractory lining 12 and throat section 31 of Brooker do not disclose, teach, or suggest “said

refractory-grade lining extending downward in a direction parallel to sidewalls of said reactor chamber over said cooling wall in an area of said second part of said reaction chamber including an area of said lower floor, such that said refractory-grade lining and said cooling wall are joined in an overlapping fashion to compensate for different heat expansions”, as expressly recited in independent claim 1.

Kummel fails to teach or suggest what Brooke lacks. Kummel discloses a wall of a gasifier having integral cooling tubes. Kummel fails to teach or separate refractory lining overlapping a cooling wall. Accordingly, independent claim 1 is allowable over Brooker in view of Kummel. Dependent claims 2-7 are allowable for the same reasons as is independent claim 1, as well as for the additional recitations contained therein.

In view of the above remarks, the rejection of claims 1-7 under 35 U.S.C. §103 should be withdrawn

The application is now deemed to be in condition for allowance and notice to that effect is solicited.

Respectfully submitted,
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